

2
No. 90-236

Supreme Court, U.S.
FILED
OCT 3 1990
JOSEPH F. SPANIOLO, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1990

STEVE JORDAN,

Petitioner,

v.

CAMERON IRON WORKS, INC.,

Respondent.

**On Petition For Writ Of Certiorari To The
United States Court Of Appeals For The
Fifth Circuit**

**BRIEF IN OPPOSITION OF RESPONDENT,
CAMERON IRON WORKS, INC.**

PHELPS DUNBAR

BY: THOMAS H. KIGGANS
445 North Boulevard, Suite 701
Post Office Box 4412
Baton Rouge, LA 70821-4412
Telephone: (504) 346-0285

*Attorney for
Cameron Iron Works, Inc.*

October 3, 1990

QUESTIONS PRESENTED

1. Whether a person claiming disability benefits under a collective bargaining agreement must exhaust applicable grievance and arbitration procedures, which he has the right to pursue with or without union assistance, as a prerequisite to filing suit in federal district court.
2. Whether the administrator of a collectively bargained disability plan abuses its discretionary authority by terminating a participant's benefits after he receives a light duty release, where both the company and the union, the two parties who negotiated the plan, agree that persons capable of light duty work are not eligible for benefits.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENTS FOR DENYING WRIT	4
ARGUMENT	5
I. THE FIFTH CIRCUIT'S DECISION IS CONSIS- TENT WITH THIS COURT'S DECISION IN FIRESTONE AND THE ANALYSIS ESTAB- LISHED THEREUNDER	5
II. THE FIFTH CIRCUIT DECLINED TO DECIDE WHAT EFFECT JORDAN'S FAILURE TO EXHAUST THE LABOR CONTRACT REMEDIES WOULD HAVE ON HIS SUIT, AND THERE- FORE, THERE IS NOTHING FOR THIS COURT TO REVIEW ON THAT ISSUE	10
CONCLUSION	11

TABLE OF AUTHORITIES

Page

CASES:

<i>Firestone Tire & Rubber Co. v. Bruch</i> , 109 S.Ct. 948 (1989)	4, 5, 6, 7, 8, 9, 11
<i>Jordan v. Cameron Iron Works, Inc.</i> , 900 F.2d 53 (5th Cir. 1990)	3, 4, 7, 8, 9, 10

STATUTE:

29 U.S.C. § 1132(a)(1)(B)	5
---------------------------------	---

RULE:

U.S. Sup. Ct. Rule 10, 28 U.S.C.	5, 10
---------------------------------------	-------

In The
Supreme Court of the United States
October Term, 1990

STEVE JORDAN,

Petitioner,

v.

CAMERON IRON WORKS, INC.,

Respondent.

On Petition For Writ Of Certiorari To The
United States Court Of Appeals For The
Fifth Circuit

BRIEF IN OPPOSITION OF RESPONDENT,
CAMERON IRON WORKS, INC.

STATEMENT OF THE CASE

In the action below, Jordan sought to recover benefits pursuant to a long term disability plan which was incorporated into a collective bargaining agreement between Cameron Iron Works and Jordan's Union.¹ The disability

¹ Cameron Iron Works was merged into Cooper Industries, Inc. effective November 29, 1989. Pursuant to Rule 29.1 of the rules of this Court, Respondent states that there are no parent companies or subsidiaries, which are not wholly owned subsidiaries, of Cooper Industries.

plan resulted from negotiations between Cameron and the Union, and Jordan was represented in the negotiations by the Union negotiating team. Cameron and the Union agree that the disability plan is intended to provide benefits for individuals who are physically unable to work in any type of gainful employment, including light-duty work. Conversely, if an individual has been released for light-duty work, he is no longer eligible for benefits. Cameron and the Union further agree that if an employee is off work as a result of a layoff, in addition to being off on disability, he remains eligible for disability benefits until he becomes capable of performing at least light-duty work. Whether he is actually recalled to the bargaining unit from layoff and assigned light-duty work depends upon whether he has enough seniority to hold a position.

A booklet describing the general provisions of the disability plan was sent to all employees, including Jordan. This booklet advised the employees of Cameron's and the Union's mutual agreement that employees are not eligible for benefits if they can perform light-duty work.

In 1982, Jordan underwent bone graft surgery to correct a discrepancy in the lengths of his legs. Following the surgery, he began receiving benefits under the disability plan. He was subsequently laid off, along with hundreds of other employees, under the terms of the seniority provisions of the collective bargaining agreement. While on layoff, Jordan continued receiving disability benefits for the next eighteen months. However, he subsequently received a light-duty release, and therefore, his benefits were terminated consistent with the

intent of the disability plan. However, he did not have enough seniority to be recalled to the bargaining unit.

The collective bargaining agreement also contains detailed grievance and arbitration procedures for resolving disputes concerning the terms of the labor contract. These procedures specifically address disputes concerning disability claims and decisions made by the administrative committee of the disability plan. These procedures culminate in final and binding arbitration. However, Jordan never challenged the termination of his disability benefits under the labor contract, even though he had the right to do so with or without Union assistance.

The district court ruled that Jordan's claim for disability benefits failed both because of his failure to pursue the grievance and arbitration procedures available under the collective bargaining agreement, and because the decision of the administrative committee to terminate his benefits was consistent with the mutual intent of the Company and the Union and with the terms of the plan. (Petitioner's Appendix C at 15a-16a) The United States Court of Appeals for the Fifth Circuit affirmed the judgment in favor of Cameron. Although the Court of Appeals declined to rule on the procedural issues concerning Jordan's failure to pursue the labor contract remedies, it held that the administrative committee gave the disability plan its legally correct interpretation, and therefore, the decision to terminate his benefits based on the light-duty release was not an abuse of the discretion conferred upon the committee under the plan's trust agreement. *Jordan v. Cameron Iron Works, Inc.*, 900 F.2d 53, 58 (5th Cir. 1990).

SUMMARY OF ARGUMENTS FOR DENYING WRIT

1. This Court has already defined the appropriate standard for district courts to review benefit determinations made by administrators of employee benefit plans. See *Firestone Tire & Rubber Co. v. Bruch*, 109 S.Ct. 948 (1989). In cases such as this, where a trust agreement empowers the trustees with discretionary authority to construe plan provisions and resolve disputed or doubtful terms, this Court stated that trust law provides for a deferential standard of judicial review. 109 S.Ct. at 954. In this case, the Fifth Circuit applied the standard of review required by *Firestone*, and analyzed the administrative committee's decision to terminate Jordan's benefits consistent with the analysis and factors it has applied in numerous other cases. See *Jordan*, 900 F.2d at 56. Jordan does not dispute, but indeed concedes, that the Fifth Circuit's analysis and test is a fair method of reviewing benefit determinations and is consistent with this Court's *Firestone* decision. He simply disagrees with the Fifth Circuit's application of the test to the facts of this case. Thus, his writ should be denied as this case does not involve an important question of federal law since all parties agree that the appropriate legal standards have been applied.

2. Jordan also suggests that this Court should grant his writ on the issue of whether his failure to exhaust the grievance and arbitration procedures of the collective bargaining agreement bar his judicial action. However, he acknowledges that the Fifth Circuit never decided that issue, but instead gave him the benefit of the doubt and simply assumed that he was not precluded from bringing

his action. Thus, there is simply nothing for this Court to review on that procedural issue.

ARGUMENT

Rule 10 of this Court's rules provides that "[a] petition for a writ of certiorari will be granted only when there are special and important reasons therefor." The rule further enumerates three specific circumstances under which the Court might appropriately exercise its discretion to grant a writ. There is no contention that the Fifth Circuit's decision in this case conflicts with any other decision. Thus, the only conceivable section under Rule 10 upon which Jordan could be relying is 10.1(c), which provides that a writ may be proper when "a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court." However, the Fifth Circuit's decision in this case raises no important questions of federal law which have not been settled by this Court.

I. THE FIFTH CIRCUIT'S DECISION IS CONSISTENT WITH THIS COURT'S DECISION IN *FIRESTONE* AND THE ANALYSIS ESTABLISHED THEREUNDER.

In *Firestone Tire & Rubber Co. v. Bruch*, 109 S.Ct. 948 (1989), this Court provided detailed guidance on the standard of judicial review applicable to claims for benefits under Section 1132(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). The Court reasoned that principals of trust law should be used in determining the appropriate

standard of review for such actions, and trust law provides for a deferential standard of judicial review when the trustee is empowered with discretionary authority. 109 S.Ct. at 954. In that case, the decision to deny benefits was not entitled to this deferential review because there was no evidence that the administrator of the plan had the power to construe uncertain terms in making eligibility determinations. 109 S.Ct. at 954. However, the opinion further provided substantial guidance concerning the deferential standard of review applicable when the trust agreement empowers the administrators with discretion to construe uncertainties in the plan and make benefit determinations. In such circumstances, this Court stated:

Trust principles make a deferential standard of review appropriate when a trustee exercises discretionary powers. See Restatement (Second) of Trusts § 187 (1959) ("[w]here discretion is conferred upon the trustee with respect to the exercise of a power, its exercise is not subject to control by the court except to prevent abuse by the trustee of his discretion"). See also G. Bogert & G. Bogert, *Law of Trusts and Trustees* § 560, pp. 193-208 (rev. 2d ed. 1980). A trustee may be given power to construe disputed or doubtful terms, and in such circumstances the trustee's interpretation will not be disturbed if reasonable. Bogert & Bogert § 559 at 169-171.

109 S.Ct. at 954.

In his present Petition, Jordan states that "[t]he primary reason for this Court granting writ is to alleviate the uncertainty which exists in the law today concerning how a District Court should review an administrator's actions in denying benefits under an ERISA plan, where the 'arbitrary and capricious' standard is required by

Firestone Tire & Rubber Co. v. Bruch, 109 S.Ct. 948 (1989).” (Petition at 6) In light of the detailed guidance already provided by this Court in *Firestone*, Jordan’s contention that uncertainty exists in the status of the law is simply insupportable.

Significantly, Jordan concedes that the test previously adopted by the Fifth Circuit and applied in this case is a fair test and a proper analysis under the *Firestone* decision. The provisions of the test are not criticized, and no alternative criteria are even suggested. In other words, Jordan does not object to the test itself, but simply disagrees with the Fifth Circuit’s application of the test to the facts of this particular case. Clearly, when there is no dispute that the Fifth Circuit has applied the proper analysis, mere disagreement with the result cannot support granting a writ of certiorari.

Moreover, a brief review of the Fifth Circuit’s opinion in this case demonstrates the correctness of its analysis and holding. First, the Fifth Circuit recognized, pursuant to the *Firestone* decision, that “when a ‘benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan,’ . . . as does the plan involved in this case, courts are to accord substantial deference to the interpretation the administrator gives the employee benefit plan.” 900 F.2d at 55.

The Fifth Circuit then utilized a two-step process in applying this deferential standard to the facts of the case. The initial inquiry was whether the administrative

committee gave the plan its legally correct interpretation.² In making this determination, the Court, in accordance with prior jurisprudence, applied the following criteria:

Our cases indicate that in determining the correctness of that conclusion we should consider: (1) whether the Administrative Committee has given a uniform construction to the plan; (2) whether the interpretation is consistent with a fair reading of the plan; and (3) whether the interpretation results in any unanticipated costs. See *Batchelor*, 877 F.2d at 444-45; *Denton*, 765 F.2d at 1304; *Dennard v. Richards Group, Inc.*, 681 F.2d 306, 314 (5th Cir. 1982).

900 F.2d at 56. As stated above, Jordan concedes that the Fifth Circuit's test is a "fair method" of analysis and is consistent with this Court's decision in *Firestone*.

After setting forth the appropriate standard of review, method of analysis, and factors to be considered in that analysis, the Fifth Circuit undertook a thorough review of the evidence presented in the district court. The Court relied upon the sworn testimony of Van Lane, the directing business representative for the Union, concerning the Union's understanding of the disability plan. The Court also relied upon the affidavit of Paul Perez, Cameron's manager of industrial relations, which set forth

² The second step in the analysis is if the administrator does not give the plan its legally correct interpretation, then the court must determine whether the administrator's interpretation constituted an abuse of discretion. See 900 F.2d at 56. However, the Court did not need to reach that step since it held that the administrative committee gave the disability plan its legally correct interpretation. 900 F.2d at 58.

Cameron's intent and understanding of the negotiated plan provisions. The Court also referenced the affidavit of the designated administrator of the plan, who testified that Jordan's benefits were terminated consistent with the mutual intent of Cameron and the Union, and with past practice. The Court also relied upon the booklet which was sent to the employees, including Jordan, shortly after the plan was negotiated in the early 1980's and which described in general terms the provisions of the disability plan. 900 F.2d at 56-58. The Court stated:

A fair reading of the plan and the accompanying interpretation in the booklet suggests that an injured worker who is not entitled to return to work under the terms of the collective bargaining agreement is no longer disabled when a "written statement from a physician" indicates that the worker is able to perform other jobs for which he is "reasonably qualified by training, education, background, or experience." The statement from Jordan's physician indicates that he was able to perform light duty work, and we conclude that the district court properly determined that Jordan was not entitled to further disability benefits under a fair reading of the plan.

900 F.2d at 57. The Court then held: "In light of this evidence, our own reading of the plan, and the explanation given workers enrolling in the plan, we are persuaded that the Administrative Committee gave the plan its legally correct interpretation." 900 F.2d at 58.

Since Jordan concedes that the Fifth Circuit applied the proper standard of review required by *Firestone* and a fair test and analysis, his Petition for Writ is simply an attempt to have yet a third court review the application of

the facts of this case to the law. Thus, his petition should be denied.

II. THE FIFTH CIRCUIT DECLINED TO DECIDE WHAT EFFECT JORDAN'S FAILURE TO EXHAUST THE LABOR CONTRACT REMEDIES WOULD HAVE ON HIS SUIT, AND THEREFORE, THERE IS NOTHING FOR THIS COURT TO REVIEW ON THAT ISSUE.

Jordan also asks this Court to grant a writ on issues that, by his own admission, were "not ruled on by the Fifth Circuit." (Petition at 9) In its opinion, the Fifth Circuit stated it would "assume without deciding that under the particular circumstances of this case Jordan's failure to take advantage of the available grievance and arbitration procedures did not preclude him from bringing this action." 900 F.2d at 55.

Supreme Court Rule 10.1(c) specifies that review may be appropriate when "a United States court of appeals has *decided* an important question of federal law." (emphasis added) In other words, any basis for granting a writ presupposes a decision by the Court of Appeals. Since the Fifth Circuit made no decision on the procedural issue, there is nothing to review. Indeed, Jordan is hardly in a position to seek a review of the procedural issue in this case since the Fifth Circuit assumed that issue in his favor.

CONCLUSION

In summary, there are simply no important unsettled legal issues present in this case. The Fifth Circuit based its decision on the standards set forth by this Court in *Firestone Tire & Rubber Co. v. Bruch* and prior Fifth Circuit cases. Jordan does not challenge the standard of review or analysis employed by the Fifth Circuit. Indeed, he concedes that they are fair and consistent with established law. He merely disputes the application of the law to the facts of this case. Moreover, his request for review of the procedural issue is specious since the Fifth Circuit did not decide that issue, but instead simply assumed that his failure to exhaust the labor contract remedies did not preclude him from bringing this action. Thus, his Petition for Writ of Certiorari should be denied.

Respectfully submitted,

PHELPS DUNBAR

BY: THOMAS H. KIGGANS
445 North Boulevard, Suite 701
Post Office Box 4412
Baton Rouge, LA 70821-4412
Telephone: (504) 346-0285

Attorney for
Cameron Iron Works, Inc.